IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.683 of 2007

Venkatesan .. Petitioner

Vs

1. The State of Tamil Nadu, rep by
   Secretary to the Government
   Prohibition and Excise Department
   Fort St. George
   Chennai 600 009.

2. The District Magistrate
   and District Collector
   Vellore District
   Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.T.R.Radhakrishnan

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, Venkatesan, son of Raji, who is the detenu, who was incarcerated by order dated 28.4.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982)

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branding him as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 28.4.2007 in Ref. No.C3.D.O.No.36/2007 against the petitioner, Venkatesan, son of Raji, now confined at Central Prison, Vellore, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 28.4.2007 came to be passed based on the ground case said to have taken place on 6.4.2007, on the basis of the complaint lodged by one Murugesan before the Inspector of Police, Tirupattur Town Police Station. According to the complainant, he was consuming arrack daily. On 6.4.2007, he went to Sivarajipettai and purchased one glass of arrack from Venkatesan, the detenu herein, for a sum of Rs.10/-. While consuming, he felt more odour. On consuming arrack, he felt more irritation in throat, dizziness and irritation in eyes and also felt giddiness. Suspecting that Venkatesan would have mixed some drug to give more booze and to prevent others from drinking the said arrack, he lodged a complaint to take necessary action.

3. The second respondent, taking note of this case as a ground case and finding that there are three adverse cases pending against the detenu for the offences punishable under Sections 4(1)(aaa) and 4(1)(i) of the Tamil Nadu Prohibition Act, and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 28.4.2007 on the only ground of pre-determination of mind on the part of the sponsoring authority, as evident from their submission made in Crl.M.P.No.2687 of 2007 filed by the detenu seeking bail, on the file of Principal sessions Judge, Vellore, wherein, even prior to the passing of the detention order dated 28.4.2007, the counsel for the sponsoring authority submitted that the sponsoring authority had already taken steps to detain the detenu under Act 14 of 1982, and if he is released on bail, he is likely to abscond and based on the said submission, the said Crl.M.P. was dismissed.

5. In view of the fact that the there is a pre determined notion expressed by the sponsoring authority even before the order of detention is passed by the detaining authority, we are of the considered opinion that the impugned order of detention is vitiated. Accordingly, this petition is allowed. The order of detention dated

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28.4.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to the Government
   Prohibition and Excise Department
   Fort St. George
   Chennai 600 009.

2. The District Magistrate
   and District Collector
   Vellore District
   Vellore.

3. The Superintendent,
   Central Prison,
   Vellore.

4. The Joint Secretary
   to Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

5. The Public Prosecutor
   High Court, Madras.

KK(CO)
SR/10.9.2007

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